

SERVED: October 30, 1998

NTSB Order No. EA-4714

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 28th day of October, 1998

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14847
v.	)	
	)	
ALFRED C. HABELMAN,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent, appearing pro se, appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued at the conclusion of an evidentiary hearing held on November 12, 1997.<sup>1</sup> By that decision, the law judge affirmed the Administrator's amended order imposing a 90-day

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<sup>1</sup> An excerpt from the hearing transcript containing the law judge's initial decision is attached.

suspension of respondent's airman certificate for his violation of section 91.113(g), 14 CFR Part 91, of the Federal Aviation Regulations ("FARs").<sup>2</sup> We deny the appeal.

Respondent, who holds a commercial pilot certificate, was the pilot-in-command ("PIC") of N7797C, a Piper PA-32-300 that collided with N8872V, a Bellanca Super Viking, at the intersection of runway 14 and runway 19 at Montgomery County Airport ("CXO"), Conroe, Texas, on May 21, 1995.<sup>3</sup> At the time of the collision, respondent was attempting to take off on runway 14 and the pilot of the Bellanca was attempting to land on runway 19. The accident occurred during daylight, and visual meteorological conditions prevailed.

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<sup>2</sup> FAR § 91.113 provides, in relevant part, as follows:

**§ 91.113(g) Right-of-way rules: Except water operations.**

\* \* \* \* \*

(g) *Landing.* Aircraft, while on final approach to land or while landing, have the right-of-way over other aircraft in flight or operating on the surface, except that they shall not take advantage of this rule to force an aircraft off the runway surface which has already landed and is attempting to make way for an aircraft on final approach. . . .

<sup>3</sup> At CXO, runway 14 and runway 19 intersect about 1,000 feet from the northwest end of runway 14, and the threshold of runway 19 is displaced just to the right of runway 14. In the collision sequence, the landing gear of the Bellanca, which was airborne on very short final, struck and embedded in the cowlings of respondent's aircraft. Neither pilot suffered life-threatening injuries.

Many of the arguments raised in respondent's brief are either irrelevant to the issue before us or dependent upon facts not proved in the record.<sup>4</sup> For example, respondent devotes much of his brief to arguing that the Bellanca pilot violated various FARs, but our review is limited to whether the record supports a conclusion that *respondent* violated section 91.113(g).<sup>5</sup> We also interpret respondent's brief to reflect disagreement with the law judge's assessment of the evidence, but this, too, is unavailing.<sup>6</sup> Respondent demonstrates no error in the law judge's findings or conclusions, and we find no reason to disturb them. Respondent failed to give way to a landing aircraft, and absent circumstances, not shown here, that would exonerate him from culpability, we must conclude that a violation of section 91.113(g) has been established.<sup>7</sup>

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<sup>4</sup> Respondent has attached numerous documents to his appeal brief, some of which the Administrator has objected to on the grounds that they constitute new evidence under 49 CFR § 821.50(c). Respondent has made no showing that these documents, or the information that they contain, could not have been produced at the time of the hearing, and we therefore strike those portions of respondent's submissions that were not already in the record.

<sup>5</sup> We note, however, that enforcement action was also initiated against the Bellanca pilot as a result of the accident.

<sup>6</sup> We have considered all of respondent's arguments and, to the extent they do not already fall within one of the characterizations above, we find no merit in them.

<sup>7</sup> The Bellanca pilot testified that he announced over the unicom frequency that he was entering a left downwind for runway 19, and, subsequently, that he was turning final for  
(continued . . .)

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 90-day suspension of respondent's airman certificate shall commence 30 days after the service date indicated on this opinion and order.<sup>8</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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(continued . . .)

runway 19. Although respondent presented evidence that another pilot flying in the pattern neither saw nor heard the Bellanca pilot on the unicom frequency, respondent's evidence does not demonstrate that the Bellanca pilot failed to make transmissions or that the Bellanca pilot failed to fly an appropriate or observable approach to runway 19. In short, respondent offers no substantiated reason for us to conclude that his failure to observe the landing aircraft should be excused.

<sup>8</sup> For the purposes of this order, respondent must physically surrender his airman certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).